



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Avtec, Inc.

File: B-238824

Date: June 22, 1990

Ronald A. Duncan, for the protester.

Robert A. Moesch, Modular Communication Systems, Inc., an interested party.

Allen W. Smith, Forest Service, Department of Agriculture, for the agency.

Barbara Timmerman, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency evaluated proposals on basis of factors not explicitly stated in solicitation is denied where factors actually used in the evaluation were reasonably related to the stated evaluation criteria.
2. Where a proposal is considered to be acceptable and in the competitive range, an agency is not required to discuss every aspect of the proposal that receives less than the maximum possible score.
3. Where the solicitation does not indicate in relative terms the importance of price and technical factors, they are considered approximately equal in weight.
4. Award to higher rated, higher priced offeror was proper where price and technical factors were of equal importance and where agency reasonably determined that the technical advantage associated with the proposal was worth the difference in price.

DECISION

Avtec, Inc., protests the award of a contract to Modular Communications Systems, Inc., under request for proposals (RFP) No. R1-90-5, issued by the Forest Service, Department of Agriculture, for a communication control system to aid in dispatching and monitoring during fire emergencies. Avtec

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contends that the Forest Service improperly evaluated the proposals.

We deny the protest.

The RFP provided for the award of a fixed-priced contract to the offeror whose proposal was determined to contain the combination of technical and price features most advantageous to the government. The three technical evaluation areas, listed in descending order of importance, were system configuration and design, operator features, and business and support organization.

The agency received five proposals by the January 17, 1990, due date. The proposals were rated under each technical factor as either not acceptable, acceptable, exceeds acceptable or excellent. All proposals were determined to be within the competitive range. After best and final offers were submitted, Modular received a rating of excellent in all three areas. The protester received ratings of excellent in the areas of system configuration and business and support organization, and a rating of acceptable in the area of operator features. The awardee proposed a final price of \$124,061 while Avtec proposed a price of \$83,702. The agency determined that the technical superiority of Modular's proposal outweighed its higher price and made award to that firm on March 2.

Avtec questions the rating of acceptable that it received in the area of operator features and maintains that discussions were inadequate. It also objects to the agency's determination to award to Modular at a substantially higher price. After examining the record we find the Forest Service's award determination to be reasonable.

Regarding the agency's evaluation of Avtec's proposal, the determination of the relative merits of a proposal is primarily a matter of administrative discretion which we will not disturb unless the record shows that it is unreasonable or not in accordance with the evaluation criteria. Ferranti Int'l Defense Sys., Inc., B-237555, Feb. 27, 1990, 90-1 CPD ¶ 239.

The record reveals that Avtec received an "acceptable" rating under operator features based on several factors. The agency noted that the ergonomics of Avtec's proposed furniture was very weak, with the size of its work space judged particularly inadequate. It also determined that while the user interface with Avtec's console was good, Modular's was superior, with double check processes and easy to read color coded buttons. Additionally, Modular offered

a timing/tracking device that keeps track of and notifies a dispatcher to follow-up on the status of aircraft and personnel. Avtec did not offer this feature which the agency determined would significantly enhance the safety and efficiency of its operation. Finally, the agency found that there was a potential for false commands in Avtec's system if preventative maintenance was not performed on a routine basis.

Avtec asserts that if work space and a timing/tracking feature were critical to the evaluation, the agency should have stated so in the RFP. Avtec maintains that it would have supplied additional work space and a timing/tracking feature had it known that these enhancements were valued so highly. Avtec also disputes the agency's determination that its system had the potential for false commands if preventative maintenance was not performed. It states that it only recommended to the agency that the console screen be cleaned every 2-3 months and that, in any case, there is never the potential for false commands.

We think the agency's determination that Modular's proposal was superior to Avtec's is supported by the record and consistent with the evaluation criteria. At the outset we note that while agencies must inform offerors of all major evaluation factors, they need not expressly identify the various aspects of each which might be taken into account, provided that such aspects are reasonably related to or encompassed by the stated criteria. Jeffrey A. Cantor, B-234250, May 30, 1989, 89-1 CPD ¶ 517. We view the agency's crediting Modular because of the more spacious work area afforded by its system design to be logically encompassed by the RFP category operator features. The RFP specifically provided that the system proposed should be designed to best utilize the existing space and that the offeror should demonstrate system features that reduce operator fatigue. Consequently, the agency's determination that the limited work area proposed by Avtec would make operations inefficient and conditions more stressful for dispatchers was, we think, logical and consistent with the criteria.

Similarly, we believe that the RFP put Avtec sufficiently on notice that a timing/tracking device, such as the one Modular offered, could be considered an enhancement that might result in a more favorable evaluation. The RFP specifically provided under operator features that the offeror should demonstrate the features and capability that make the system easy to operate. The RFP further provided that the system should represent current state-of-the-art technology. The timing/tracking device keeps track of and

notifies a dispatcher to follow-up on the status of aircraft and personnel. The agency determined that this was a very valuable feature that would make the dispatcher's work easier and more efficient. The agency also determined that the device would result in significant cost savings and would prevent the possible loss of life or resources that can occur if aircraft or personnel are not tracked during the course of fires. We have no basis for concluding that the Forest Service was somehow precluded from considering this advantage offered by Modular's proposal, especially since the RFP provided that a state-of-the-art system should be supplied.

Further, we do not agree with Avtec that the Forest Service was required to advise it during discussions that more favorable consideration would be given to an offeror proposing a more spacious work area and a timing/tracking device. While a contracting agency must conduct discussions with all offerors in the competitive range, advising them of deficiencies in their proposals, they are not required to conduct all encompassing discussions. Agencies are only required to lead offerors into areas of their proposals that are considered to be deficient. Barnes & Reinecke, Inc. and FMC Corp., B-236622; B-236622.2, Dec. 20, 1989, 89-2 CPD ¶ 572. Where a proposal is considered acceptable and within the competitive range, the agency is not obligated to discuss every aspect of the proposal that receives less than the maximum possible rating. Id.

Here, as indicated, the Forest Service was impressed with Modular's proposal and considered it superior based on the operator features it offered, in particular the timing/tracking device and a work area that was more spacious and efficient than Avtec's. The Forest Service did not consider Avtec's proposal deficient for failing to provide the same features. Instead, the record shows that the agency determined Avtec's proposal was acceptable and contained only relative "disadvantages" as compared to Modular's. Consequently, the agency was not required to cite these matters during discussions. Moreover, the record shows that in addition to oral discussions, Avtec was asked to respond to 10 written discussion questions in order to rectify what the agency considered were possible deficiencies in its proposal. Under the circumstances, we cannot say that the agency was required to do more.

With respect to the potential for false commands, the agency's basis for making this comment is not clear from the record. While Avtec recommends that the console screen be cleaned regularly, it contends that a failure to do so will not result in false commands. This matter did not appear to

have had a significant impact on the rating Avtec received. The record shows that Avtec was not "downgraded" for this. The firm did not obtain a rating of excellent mainly because it did not offer the desirable additional features that Modular did and because of the evaluators' conclusions regarding its workspace layout.

Avtec contends that the record does not support the agency's decision to make an award to Modular at a price far in excess of its own. Avtec states, without submitting any support for its position, that the price of the additional features noted in the agency's analysis is far less than the additional amount paid by the agency in accepting Modular's proposal.

In order to quantify the price/technical tradeoff involved in selecting Modular for award, the Forest Service conducted an analysis where it determined that the enhancements offered by Modular, the furniture, the timing/tracking device and future software upgrades, were worth \$51,900.. It then added this cost to Avtec's proposed price of \$83,702 to arrive at a total price of \$135,602, \$11,541 more than Modular's proposed price of \$124,061. Based on this analysis, the contracting officer selected Modular for award.

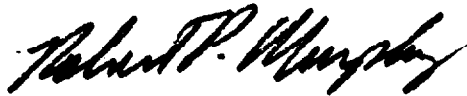
In a negotiated procurement, the government is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. University of Dayton Research Ins., B-227115, Aug. 19, 1987, 87-2 CPD ¶ 178. Where, as here, a solicitation indicates that price will be considered but does not indicate the relative importance of price and technical factors, they are considered approximately equal in weight. Bachy/Bauer/Green Joint Venture, B-235950, Sept. 18, 1989, 89-2 CPD ¶ 240.

Since the RFP therefore did not provide for award on the basis of the lowest priced technically acceptable proposal, the contracting officer had the discretion to determine whether the technical advantage associated with Modular's proposal was worth its higher price. This discretion exists notwithstanding the fact that price and technical factors were of equal weight. ADT Facilities Management Inc., B-236122.2, Dec. 12, 1989, 89-2 CPD ¶ 541. Award to a technically superior, higher priced offeror is proper so long as that result is consistent with the evaluation criteria and the procuring agency has reasonably determined that the technical difference is sufficiently significant to outweigh the price difference. Id. As explained above, the Forest Service determined that even though Avtec proposed a

less costly system than Modular, in the judgment of the contracting officer, Modular's technical advantage, which the agency quantified at \$51,900, outweighed the price advantage of a contract with Avtec. Although Avtec disagrees with the specific dollar value the agency placed on the superior technical features offered by Modular, it did not provide supporting evidence that went beyond its general assertions of what it believed the features would cost.

In sum, we find no legal basis to object to the Forest Service's decision to select Modular for award. Based on our analysis of the agency's evaluation of proposals, we think the agency properly exercised its discretion when it determined that the superiority of Modular's proposal was worth more than the price advantage associated with Avtec's.

The protest is denied.



for James F. Hinchman
General Counsel